

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )  
FOR REVIEW BY: )  
 )  
**DANIEL F. DUNN** )  
 )  
Petitioner. )

CHARGE NO.: 2009CF2569  
EEOC NO.: 21BA91225  
ALS NO.: 09-0548

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman and Charles E. Box presiding, upon Daniel F. Dunn's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2009CF2569; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Department's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

**LACK OF JURISDICTION**

In support of which determination the Commission states the following findings of fact and reasons:

1. On January 29, 2009, the Petitioner filed a charge of discrimination with the Respondent. The charge was perfected on January 30, 2009. The Petitioner alleged his former employer B & H Systems, Inc., ("Employer") discharged him (Count A) and denied him benefits (Count B) because of his physical disability, back disorder, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On August 28, 2009, the Respondent dismissed the Petitioner's charge for Lack of Jurisdiction. On September 28, 2009, the Petitioner timely filed his Request.
2. The undisputed facts in the investigation file show the Petitioner worked for the Employer as a truck driver. The Petitioner's essential duties demanded that he be able to move and lift boxes weighing up to 100 pounds, and that the Petitioner have the ability to push and pull pallets up to 2,000 pounds using a manual pallet jack.

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<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

3. On February 8, 2008, the Petitioner injured himself on the job. The Petitioner worked light office duty from February 11, 2008 through March 13, 2008. After March 13, 2008, the Petitioner went on Family Medical Leave.
4. As of December 31, 2008, the Petitioner had not been released by his physician to return to work, and the Petitioner was still completely unable to perform the essential duties of his job.
5. On January 9, 2009, the Petitioner learned the Employer had discharged him on December 31, 2008. The Employer stated it discharged the Petitioner because it could no longer hold his position open.
6. In his charge and his Request, the Petitioner contends the Employer discharged him and denied him certain work-related benefits, such as vacation and sick days, because of his disability.
7. In its response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for Lack of Jurisdiction. The Respondent argues the Petitioner was not disabled within the meaning of the Act at the time the Employer discharged the Petitioner or allegedly denied the Petitioner his benefits.

## **CONCLUSION**

The Commission's review of the Respondent's investigation file leads it to conclude that the Respondent properly dismissed all counts of the Petitioner's charge for lack of jurisdiction. If the Petitioner's condition does not meet the definition of disability under the Act, there must be a finding of lack of jurisdiction. See 775 ILCS 5/1-103(I).

Section 1-103(I)(1) of the Act defines "disability" as a "determinable physical or mental characteristic of a person. . ." which is... "unrelated to a person's ability to perform the duties of a particular job. . ." 775 ILCS 5/1-103(I)(1).

In this case, the evidence shows the Petitioner's back disorder was directly related to his ability to perform his essential job duties. In fact, the Petitioner's back disorder rendered the Petitioner completely unable to perform his job duties. As of December 31, 2008, because the Petitioner's back disorder rendered the Petitioner completely unable to perform the duties of his position as a truck driver, the Petitioner's back disorder was not a "disability" within the meaning of Act. Therefore, the Respondent properly dismissed the Petitioner's charge for lack of jurisdiction.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and B & H Systems, Inc., as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

**STATE OF ILLINOIS**

**HUMAN RIGHTS COMMISSION**

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**Entered this 14<sup>th</sup> day of April 2010.**

Commissioner David Chang

Commissioner Marylee Freeman

Commissioner Charles E. Box